

SOUTH CAROLINA
State of the State

Restructuring the Executive Branch

Ethics Reform

Briefing Materials



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Governor Carroll A. Campbell, Jr.

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RESTRUCTURING THE EXECUTIVE BRANCH

SOUTH CAROLINA STATE GOVERNMENT

BRIEFING PAPER FOR STATE OF THE STATE ADDRESS

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The time has come to bring the structure of South Carolina's executive branch of government out of the horse and buggy era into the space age. The current structure is a relic of the last century, long since abandoned by most other states. The multitude of uncoordinated, unaccountable, uncontrolled, autonomous boards, commissions, agencies, departments, and authorities is simply incapable of responding efficiently to the massive demands and responsibilities placed on a modern state government.

Reasons for Restructuring

Two overriding reasons support the case for restructuring the executive branch.

1. Accountability

Most executive branch agencies in South Carolina are neither accountable nor responsible to the people through any statewide elected official. Most of the bureaucracy is accountable only to boards and commissions, some of which have few or no appointees by any official elected by all the people. For example, the State Board of Education has 17 members, only one of whom is appointed by the governor. The Highway Commission has 20 members, with only two appointed by the governor. The governor appoints no members of the Coastal Council, the executive branch agency charged with implementing vitally important environmental laws, or the state Board of Social Services, which has responsibility for expensive and far-reaching social programs.

In other words, the South Carolina governor is head of the executive branch in name only. Most executive branch agency directors are not directly accountable to the state's chief executive officer.

Moreover, boards and commissions are part-time supervisors. Many boards and commissions meet only once a month, thereby leaving the agencies without any full-time authority to whom they are accountable.

This lack of accountability has several debilitating consequences for government in South Carolina. When accusations of agency misconduct arise, as they have all too often in the past year, the structure inhibits quick resolution of a problem. The problems fester until they become full-blown scandals, in the process damaging the credibility of all South Carolina government.

Last spring the Director of the Highway Patrol abused his authority by saving another law enforcement officer from a charge of driving under the influence of alcohol. Yet the initial response from the agency was nothing more than a slap on the wrist. The abuse was clear, the public was outraged, and the governor was powerless to deal directly with the problem because he had no authority over any personnel in the Highway Department. As absurd as it may seem, a major executive branch official was simply not accountable to the chief executive officer of the state. The situation was not resolved until it became a statewide scandal, and the controversy demonstrates the organizational paralysis created by our structure of government.

Moreover, as a result of this horse and buggy structure, narrow special interests gain undue influence over agency activities. Because they are not accountable to an official with a statewide perspective, many agencies become dominated by the interest groups they serve. Consequently the bureaucracy ends up serving the special interests rather than the public interest.

The lack of accountability creates situations that would be considered absurd for any private sector organization.

As the highest executive official of the state, in the fall of 1989 Governor Campbell agreed with President Bush and the nation's other governors to pursue five national education goals within South Carolina. The State Department of Education is the executive branch agency that would normally be charged with implementing procedures to meet those goals. Yet that agency at the time was headed by an elected official from a different political party from the

governor who had shown hostility to many of the Governor's education initiatives. Moreover, that official had flirted with the idea of challenging the Governor for reelection.

Try to imagine a private sector organization where a department head showed open hostility to the programs of the chief executive officer, threatened to challenge him for his position, and over whom the chief executive officer had no direct influence. How could we expect that organization to function? Similarly, how can we reasonably expect the governor to be a responsible spokesman for the state in national forums when our governmental structure includes no accountability and builds in hostility to his efforts from within the branch of government he supposedly heads?

Both our national and state governments are based on a series of checks and balances to guard against the abuse of power. Yet those checks and balances are supposed to occur among the legislative, judicial, and executive branches of government, not within the executive branch. Fragmenting authority within the executive branch to the point where it cannot function as a unit is not consistent with the constitutional doctrine of checks and balances.

2. Efficiency

The current structure of South Carolina state government makes efficient and economical delivery of services virtually impossible. The multitude of agencies ensures overlapping responsibilities, unnecessary duplication, and a bloated number of managers. The time has come to stop squandering our tax dollars on such an inefficient system.

Why should our taxpayers support, in the natural resource area alone, eleven separate agencies with eleven personnel offices, eleven budget offices, and eleven different bureaucracies? Why should our state have ten separate agencies and authorities promoting commerce within South Carolina? Why should our government have nine different departments and commissions dealing with human services? Those who oppose restructuring need to answer those questions, and show why it is in the public interest to continue such wasteful overlap and duplication. The taxpayers of South Carolina deserve better.

Background

The structure of South Carolina state government made sense at the time it was adopted in the State Constitution of 1895. Then the role of government was far more constrained than it is today. At that time automobiles were mere curiosities; today the state builds and maintains a complex and extensive highway system to handle millions of cars. In 1895 health care was purely a private function; today the state-run Medicaid program spends over a billion taxpayer dollars every year on health care. In the twentieth century state governments have assumed far more responsibilities than they had in 1895, with far more complex functions. Yet at the end of the twentieth century, South Carolina state government still administers those responsibilities with a nineteenth-century structure.

The difficulties inherent in running a modern state government with an outdated structure caused most other states to abandon the board and commission system years ago. Thirty-eight states now have some form of a cabinet structure, with several departments organized by function with heads appointed by and responsible to the governor.

Illinois was one of the first states to reorganize state government into a cabinet composed of the heads of major state administrative departments. The restructuring replaced over one hundred statutory offices, boards, departments, and agencies with nine departments. Agency directors replaced independent commissions, who in turn reported to and were responsible to the governor. The Illinois governor held regular weekly meetings with department heads to discuss administrative problems and to determine general implementation policies.

Other states soon followed in restructuring. In 1928, for example, the voters of Virginia ratified amendments to the state constitution that allowed gubernatorial appointment of state agency heads. Seventy-five boards and commissions and about thirty agencies were abolished and their functions assumed by eleven departments.

South Carolina has taken some tentative steps toward greater accountability and efficiency, but the extensive revision adopted in other states has never been accomplished. For example, in the late 1940's South Carolina created a Reorganization Commission which drafted the Reorganization Act of 1948 that was adopted by the

General Assembly. The Act abolished eight state agencies and created the present Budget and Control Board to take their place.

More importantly, the Act recognized that it was in the "public interest" that state government be reorganized and made more efficient. The act prohibits "any overlapping of executive or administrative agencies or their functions, any duplication of effort and activities of such agencies, and diffusion of responsibility between one or more agencies...(T)he separate existence and status of multiple or numerous agencies and functions having the same or related major purposes, the existence under different heads of agencies having the same or or similar functions, and the existence of agencies or functions not necessary to the efficient conduct of the State government's operations." (SC Statutes at Large, 1948, 1950.)

The call for restructuring was repeated again in 1950 in the South Carolina Law Quarterly. Robert M. Figg, a former member of the General Assembly and Dean of the USC Law School, argued that "there is no state-wide responsibility or accountability to the people of the State as a whole for the administration of their public affairs or the execution of their laws." The governor, he argued, was elected "by all the people of the State" and was the symbol of state government. He should be given the authority and power to direct "a clean line of command from the top to the bottom and a return line of responsibility and accountability from the bottom to the top." In this way, the governor "can then be held responsible and accountable to the people and to the General Assembly for the conduct of the executive branch of government."

In 1988 the Commission on the Future of South Carolina argued for a cabinet form of government with agency heads appointed by and responsible to the governor. The board and commission form of government, the Commission said, creates a structure where "the state's bureaucracies are highly insulated from people they were created to serve. This insulation from the citizenry has increased feelings of disenchantment, frustration, and apathy among our citizens, producing dismal voter participation over recent years." Adoption of a cabinet form of government would provide "focused accountability."

The governmental philosophy called for in this restructuring plan is not new. On the contrary, it is consistent with the recommendations of distinguished observers of the South Carolina government for over

forty years. Unfortunately the addition of new agencies and the expansion of old ones since 1950 has moved South Carolina in precisely the opposite direction from the reforms called for by the Reorganization Act of 1948, Dean Figg, and the Commission on the Future. The time has come to heed these calls for greater accountability and efficiency in South Carolina state government.

A Plan for Reorganizing the Executive Branch in South Carolina State Government

The following plan for restructuring the executive branch will bring far greater accountability and efficiency to South Carolina state government. This plan is not written in stone, and continuing discussions may make improvements. This plan can, however, form the starting point for our discussions.

The Governor is indebted to many members of the General Assembly, the Commission on the Future, and other observers of South Carolina government for their insight and suggestions for reform, many of which are incorporated into this proposal. A number of bills have already been filed to restructure some aspects of the executive branch. This plan uses portions of bills already introduced by Representatives Clyborne, Corning, Haskins, Hodges, and Huff, and Senators Bryan, Courson, Giese, Martschink, Mullinax, Pope, Rose, Setzler, and Wilson. In addition this proposal incorporates recommendations from the report of the Commission on the Future.

Lieutenant Governor Nick Theodore, who chaired the Commission on the Future, and Representative David Wilkins, Chairman of the House Judiciary Committee, will co-chair a Restructuring Commission. That Commission will make recommendations to work out the details of this restructuring plan, and ensure that it meets the need for greater accountability and efficiency.

This plan constitutes ten cabinet departments organized by function. The governor would appoint secretaries of the ten departments with the advice and consent of the Senate. Secretaries would report to and be responsible to the governor for the management of their departments. The ten secretaries would constitute a cabinet for the governor, and would meet regularly to coordinate their administrative efforts and provide advice.

In addition, this plan would ensure the centralization of personnel management, procurement, and facilities decisions through the Department of Administration.

Under this plan the superintendent of education and the commissioner of agriculture would become the secretaries of education and agriculture respectively. The adjutant general would be appointed by the governor from a list of three names nominated by members of the National Guard. All nominees for adjutant general must be members of the Guard and must have attained a rank of at least Colonel.

The existing boards and commissions would be consolidated as advisory boards to the various departments. In some cases a cabinet department would have only one advisory board; in other cases it might have several boards advising various divisions within a department. College and university boards would remain unchanged under this proposal. The Restructuring Commission will be charged with making recommendations regarding the number, composition, and appointment to these new advisory boards.

Some agencies would not be affected by this proposal. In addition to the Constitutional offices of governor, lieutenant governor, state treasurer, comptroller general, attorney general, and secretary of state, quasi-judicial agencies such as the Human Affairs Commission and the Ethics Commission would remain as independent regulatory agencies with no change in their governing boards. But many agencies would be consolidated into the ten cabinet departments.

This proposal could not be fully implemented before the end of Governor Campbell's administration. Consequently any changes that occur would affect only subsequent governors. The major beneficiaries of this proposal would be the people of South Carolina, for they have paid for and suffered the inefficiencies of an outmoded governmental structure for too long.

Outline of Proposed Restructuring of the Executive Branch South Carolina State Government

Ten Cabinet Departments

1. Public Education

1. Department of Education
2. Wil Lou Gray Opportunity School
3. School for the Deaf and Blind
4. John de la Howe School
5. Vocational Rehabilitation

2. Higher Education

1. State Commission on Higher Education
2. Higher Education Tuition Grants Commission
3. Colleges and Universities
4. State Board for Technical and Comprehensive Education

3. Cultural Affairs

1. State Museum
2. Department of Archives and History
3. Arts Commission
4. State Library
5. Confederate Relic Room and Museum
6. Old Exchange Building Commission
7. Educational Television

4. Natural Resources

1. Water Resources
2. Land Resources
3. State Forestry Commission
4. Department of Agriculture
5. Clemson University: Public Service Activities
6. Migratory Waterfowl Committee
7. Wildlife and Marine Resources Department
8. Coastal Council
9. Sea Grant Consortium
10. Department of Parks, Recreation, and Tourism: Parks and Recreation Divisions
11. Department of Health and Environmental Control: Environmental Division

5. Commerce

1. State Development Board
2. Jobs-Economic Development Authority
3. Patriots Point Development Authority
4. Savannah Valley Authority
5. Housing Finance and Development Authority
6. Department of Labor
7. Employment Security Commission
8. S.C. Research Authority
9. Department of Parks, Recreation, and Tourism: Tourism Division
10. Coordinating Council for Economic Development

6. Health

1. Health and Human Services Finance Commission
2. Department of Health and Environmental Control: Health Division
3. Department of Mental Health

7. Human Services

1. Department of Social Services
2. Continuum of Care for Emotionally Disturbed Children
3. Department of Mental Retardation
4. Commission on Alcohol and Drug Abuse
5. Children's Foster Care Review Board
6. Commission for the Blind
7. Commission on Aging
8. Department of Veterans Affairs
9. Commission on Women

8. Criminal Justice

1. Department of Corrections
2. Department of Youth Services
3. Probation, Parole and Pardon Services
4. Office of Appellate Defense
5. Criminal Justice Academy

9. Transportation

1. Department of Highways and Public Transportation
2. Aeronautics Commission
3. Public Railways Commission

10. Administration

1. Budget and Control Board
2. Bond Authority
 - a. Consists of the bond capacity of the Jobs Economic Development Authority, the State Housing Authority, and the Budget and Control Board Division of General Services

Constitutional Offices

1. Governor

1. Adjutant General
2. S.C. Law Enforcement Division
3. Law Enforcement Officers Hall of Fame

2. Lieutenant Governor

3. State Treasurer

4. Comptroller General

5. Attorney General

6. Secretary of State

Independent Regulatory Agencies

1. Election Commission

2. Human Affairs Commission

3. Ethics Commission

4. Public Service Commission

5. Workers' Compensation

1. Workers' Compensation Commission
2. State Workers' Compensation Fund
3. Second Injury Fund
4. Patients' Compensation Fund

6. Department of Insurance

7. Board of Financial Institutions

1. Financial Institutions: Administrative Division
2. Financial Institutions: Bank Examining Division
3. Financial Institutions: Consumer Finance Division

- 8. Department of Consumer Affairs**
- 9. Alcoholic Beverage Control Commission**
- 10. Tax Commission**
- 11. Procurement Review Panel**
- 12. Various independent boards and commissions**
(Barbers, nurses, auctioneers, pharmacists,
chiropractors, etc.)

ETHICS REFORM IN SOUTH CAROLINA
GOVERNMENT ACCOUNTABILITY ACT OF 1991
BRIEFING PAPER FOR STATE OF THE STATE ADDRESS
JANUARY 16, 1991

In light of the recent federal investigations and prosecution of members of the General Assembly in "Operation Lost Trust," the citizens and public leaders of this state have had to re-examine our laws regulating the ethical conduct of elected and appointed public officials. Public confidence in our government has been seriously eroded as allegations of misconduct and corruption continue to be made public. This eroding confidence has not only affected the guilty, but extends to those dedicated public servants who are equally offended and concerned by the actions of a few. In turn, the public has also begun to question not only the people involved in the offenses, but the institutions of government in which they serve. There is little that is more discouraging to those honest public officials and to their constituents than the revelation of officials violating the public trust. It is with these concerns in mind that Governor Campbell offers the Government Accountability Act of 1991, which is comprehensive legislation that will substantially alter the way elected officials and government employees conduct the people's business in South Carolina.

It is the Governor's firm belief that the best way to prevent the possibility of conflicts of interest is to establish comprehensive public disclosure of all economic interests held by public officials and certain employees. Complete disclosure will provide the public with the opportunity to judge for themselves whether individual officials are involved in improper activities. In addition, the way in which public officials interact with lobbyists must be curtailed and better regulated. By establishing an environment of good ethical behavior and full disclosure, all members of the body politic will be finally held to the lofty expectations that the public has always held for them.

This need for reform is not limited to South Carolina. Many states including California, West Virginia, Tennessee and New York have recently passed landmark legislation to cure the ills of their political system. The federal government has also been fine tuning and strengthening its ethics laws.

This state must be careful to adopt a sound, fair plan that will "grab the reins of the runaway horse." The plan must be one that encompasses all of the pertinent issues, yet at the same time it must not be petty or so concerned with insignificance that the spirit of true reform is lost. While the issues that need to be addressed are delicate, the private interest of the individual that serves the public is superseded by the public interest in good government.

These principles of Accountability in Government Act of 1991 will bring what has long been missing in this state, accountability of government officials to the public that elects them.

The Government Accountability Act of 1991 (the GAA) is divided into five sections. These sections include:

- 1) Campaign Disclosure;
- 2) Lobby Reporting and Disclosure;
- 3) Financial Disclosure;
- 4) Administration of Ethics; and
- 5) Public Corruption, conflict of interest and rules of conduct.

The GAA takes a two track approach to ethics reform. This package contains substantially more detailed disclosure of campaign contributions and expenditures, lobbying expenditures and more detailed disclosure of economic interest of officials and certain employees than is required under current law. Secondly, the initiative includes certain limitations and prohibitions that create absolute conflict of interest such as honorarias, extravagant gifts, travel, and retainer or consultant fees.

The GAA is more comprehensive than some of the other proposed legislation. It follows a more realistic path towards reform. This package adopts a more practical gift rule than the "no cup of coffee" rule adopted in the House Rules and in the proposed Senate Judiciary Rules. The GAA permits limited exchanges involving meals. At the same time, the GAA squarely addresses the vastly more pressing problem of members of the General Assembly acquiring huge retainers or consultant fees from businesses with a direct interest in legislation. To prohibit a lobbyist from buying an official a cup of coffee, but to permit the same lobbyist, or his principal, to pay a huge retainer fee to the same official is equivalent to a police officer arresting a shoplifter while allowing a bank robber to go free. We must address both issues and yet not discourage dedicated people from entering public service.

Although this legislation is offered as a comprehensive solution to ethics reform, no statute can instantly and permanently cleanse the body politic of corrupt behavior. Nevertheless, the Governor hopes that it will create an environment in which the integrity that is demanded by the public is expected.

SUMMARY OF ACCOUNTABILITY ACT of 1991

The Government Accountability Act of 1991 is divided into five parts. These parts include:

- 1) Campaign Disclosure;
- 2) Lobbying and Disclosure;
- 3) Financial Disclosure;
- 4) Administration of Ethics; and
- 5) Public Corruption, Conflict of Interests, and Rules of Conduct.

This act is a substantial rewrite of our current law with an extensive increase in provisions concerning these five areas. The following is a brief synopsis or highlights of each of the five areas of concern.

Chapter 1: Disclosure and Use of State and Local Campaign Funds

- Limits campaign expenditures for only bonafide political purposes;
- Prohibits a candidate's immediate family from receiving payments other than reimbursements from the Committee;
- Prohibits use of campaign funds to defray personal living expenses of the candidate which are unrelated to the campaign or the office if the person is an officeholder;
- Limits cash expenditures to no more than \$25. Anything more than \$25 must be accounted for by receipt indicating date of expenditure, name and address of recipient, reason for expenditure, and form of expenditure;
- Prohibits campaign treasurer from withdrawing more than \$500 to establish or replenish a petty cash fund and such expenditures cannot exceed petty cash fund for \$25 or more;

- Requires each candidate to designate one candidate committee by filing a statement of organization no longer than 10 days after becoming a candidate;
- Requires each candidate committee to have a chairman and a treasurer;
- Establishes clear duties for campaign committee treasurers including preserving all receipts, bills, loans for a specified period of time;
- Permits the creation of non-candidate committees; however, such committees shall file a statement of organization similar to candidate committees, and requires specific information of those people directing and creating the non-candidate committee;
- Requires a statement of financial interest as defined in Chapter 3 of the Act at the same time the candidate files a statement of candidacy;
- Requires detailed reporting forms for candidate and non-candidate committees including information concerning loans, expenditures, receipts, similar to federal campaign disclosures including the name, occupation and employer of contributors;
- Continues to require reporting of contributions over \$100 and such contributions must be made by check;
- Prohibits cash contributions over \$50;
- Requires all campaign disclosure forms to be filed with the State Election Commission and the Commission must then forward copies of local candidate's forms to the county clerks of court;
- Requires candidates, and now candidate committees, to file 15 days before primary date regardless of opposition, and 15 days before the general election regardless of opposition, and quarterly during election year and semi-annually during those non-election years;
- All contributions of \$1,000 or more, after the pre-election filing, must be reported to the Election Commission the Wednesday prior to the election and all contributions made available to public inquiry between that Wednesday and the day before the election;

-- Limits personal campaign contributions to \$2,000 per election and association, union, non-candidate political committees, and corporations to \$5,000 per election;

-- All filing forms must be sent to the candidate and candidate committees 30 days before each filing period for which each person is required to file a statement;

-- Non-candidate committees' surplus funds when they shut down shall go to the state general fund charity or be returned pro rata to all contributors or a combination of both. Candidate committee surplus funds may be used to defray any ordinary and necessary expenses incurred in connection with his or her duties as an officeholder, or contributed to charities, or to a state and local committee of any political candidate or party. No candidate may expend any such contribution for personal use other than defray any reasonable expenses related to his or her duties as a holder of state or local office. Candidates may use funds for their next election or for election to another office;

-- Requires State Election Commission to refer anything more than a technical error or omission of a candidate on non-candidate's committee to the State Ethics Commission. For technical error or omission the Election Commission may assess a penalty not to exceed \$100.

Chapter 2: Regulation of lobbying activities

-- Lobbyists must complete an extensive registration form with the Secretary of State within 15 days after becoming a lobbyist. They must also file reports of all individual expenditures, contributions and gifts of \$50 or more every six months and preserve those records for three years;

-- The Secretary of State is responsible for the registration, reporting, preserving of lobbyists' disclosures, and the Attorney General, with SLED assistance, shall conduct all preliminary investigations of lobbyists' activity referred them by the Secretary of State;

— Specifically prohibits lobbyists from serving as treasurers on candidate committees, or receiving compensation contingent upon the outcome of a specific legislation;

-- Lobbyists are required to file a separate report for each lobbyist's principal with a list of contributions, expenditures and gifts paid by the lobbyists or on behalf of each lobbyist principal during the reporting period. The report includes a description of a contribution or expenditure of \$50 or more in the aggregate in one year initiated by a lobbyist to an executive, legislative or local official or employee including their name, legislative, executive or local government official or employee receiving payment and on whose behalf the expenditure was made;

-- The report must also include the amount of fees, retainers and/or expenses paid to lobbyists by lobbyist principal. Reporting requirements are due no later than March 31 and September 30 for each preceding six month period. March 31st report shall include a cumulative total for the prior year of all reportable categories;

-- Registration reporting provisions do not apply to members of the General Assembly, the Governor, other elected state officials or their staff members if acting in their official capacity. For individuals who represent themselves and receive no compensation or anything of value for lobbying and have no direct interest in legislative, executive or local government actions, no reporting is required. Also excludes reporting by an employee of the executive branch who provides formal testimony for a public meeting of a legislative body or executive agency;

-- Requires lobbyist principal to report the names and addresses of those lobbyists retained for its benefit annually;

-- Prohibits lobbyist or lobbyist principals from paying honoraria to state official or employees;

-- Prohibits lobbyist or lobbyist principal or regulated industry from employing on retainer any state official or employee or any firm or organization in which they have a financial interest;

-- Prohibits lobbyists from serving on a state board or commission;

-- Requires lobbyists to also file termination reports as an intention of their final accounting of their lobbying activity for a particular client; and

-- Prescribes specific duties for the Secretary of State and the Attorney General and the enforcement of this Act, and provides a fine of not more the \$2,000, or three years in jail, for lobbyists who knowingly or willfully violate the provisions of this chapter.

Chapter 3: Financial Disclosure for Legislative, Executive, Judicial, and Local Officers and Specified Employees

This section specifically provides those individuals required to file financial disclosure reports. The reports themselves are considerably more detailed than those currently required and are based upon federal government financial disclosure provisions. It requires reporting the income earned and unearned by the individual, the spouse, and their dependent children. Unearned income is reported in categories of value. Also requires specific fees as earned income, earned by a member of the General Assembly and other public officials from people who are regulated or have a direct interest in legislation currently before the General Assembly;

- Includes the specific reporting of earned income (retainers, consultant fees, or legal fees) from individuals or groups who have a direct interest in legislation;

- Requires a reporting of gifts of transportation, lodging, food or entertainment aggregating \$250 or more in value from any source other than relatives for the preceding calendar year, loans exceeding specific amounts per year, and liabilities aggregating \$5,000 or more during the preceding calendar year;

- Requires a reporting of reimbursements of transportation, lodging, food or entertainment aggregating \$250 or more in value from any source other than relatives for the preceding calendar year;

- Requires all assets in their categories of value excluding personal residences and automobiles and transactions in real or personal property which exceed \$1,000 in value;

- Also requires the filer to report positions such as director, officer, consultants, etc. which the filer holds, and report any agreements with respect to future employment, leave of absence during government service, and continuation of payments from former employers; and

- Allows the Ethics Commission to grant an extension of time if requested prior to the April 15th filing date of each year, not to exceed 30 days, and provides the public right for inspection of these reports, and penalties for failure to file or falsifying reports to be prosecuted by the Attorney General.

Chapter 4: The Administration of Ethics

- Creates a nine member State Ethics Commission appointed by the Governor, with advice and consent of the General Assembly;
- Prohibits members of the Ethics Commission from being public officials, public employees, candidates or officials in political parties, lobbyists or members of the immediate families of such individuals while a member or employee of the Commission. Also prohibits these members and employees of the Commission from participating in any kind of political activity;
- Commissioners are appointed for five year terms and may serve only one term;
- Commission is granted the authority to issue advisory opinions and in certain circumstances provides for confidentiality of those opinions;
- Gives the Commission power to conduct investigations, inquiries, and hearings;
- Requires the assistance of other state agencies for the conducting its investigations, and provides for the Commission to institute its own complaints if it receives information for violation. Complaints may also be initiated by individuals if they specifically allege a violation of the act and set forth the particulars of that violation;
- Commission shall conduct a preliminary investigation to determine whether probable cause exists at which time it can subpoena documents, take testimony and make a report of probable cause of violation if it deems so to the complainant and respondent. If probable cause is determined, then the matter goes before a three person panel of the Commission to conduct a hearing. Once all the evidence is gathered, the Commission Panel shall find its ruling and issue its order and recommendation. Orders and recommendations can include everything from censure, suspension, removal from office, impeachment, other remedies provided for in the Code; and for the forfeiture of gifts or profits resulting from violations of the act, etc.;
- Since this act eliminates legislative ethics committees, the Commission can only offer recommendations to the presiding officer of each chamber as to what action should be taken against a member of the General Assembly;

- It provides an opportunity for the respondent to file an appeal of a three man panel to the full Commission for review. If deemed appropriate, such review will stay any of the recommendations filed by the Panel;
- Provides a civil penalty for those who file complaints that are willfully malicious and without just cause;
- No complaint filed sixty days before the election of a candidate or official shall be accepted by the commission;
- Permits the Commission to refer any criminal violations to the Attorney General, and if in the period of a year the Attorney General fails to prosecute, allows the Ethics Commission to request the appointment of a special prosecutor with the permission of the Budget and Control Board to prosecute the matter; and
- Provides a statute of limitation of three years for acts alleged prior to the complaint.

Chapter 5: Rules of Conduct, Conflicts of Interest, and Public Corruption

- Clarifies use of official position or office for financial gain by defining close family member;
- Provides that if the public official or public employee is required during the discharge of official business participating in a government decision which affects any economic interests held by him or his close family member or an individual business of which he is associated, he must file a written statement of a potential conflict of interest, abstain from voting, and remove himself from the meeting in which that issue is raised;
- Prohibits nepotism;
- Continues restrictions on members of the General Assembly or members of their firm from representing clients before certain state agencies. Also precludes a member of a governing body or a member of their firm from representing clients before the agency, board, committee or commission under the jurisdiction of that governing body upon which he serves;

-- Excludes appearances in circuit court, probate court, family court or magistrate's court in which the public official is required to appear in a matter affecting his business interests as an owner or officer of the business;

-- Has a "Keating 5" amendment that allows a member of the General Assembly to communicate properly with the executive or independent agency concerning the matter before them, but prohibits ex parte communications on matters currently under adjudication, or in any way threatens or intimidates agency representatives with retaliatory action if they fail to comply with the member's specific requests or demands; and

-- Prohibits anyone from coercing, commanding, or requiring public officials or employees to give money, service or other things of value in a political campaign.

In conclusion, this Act:

-- Provides more detailed reporting requirements both in financial disclosure and personal economic interest forms;

-- Expands the authority of the Ethics Commission and places most of the reporting requirements under their jurisdiction except for lobbying act;

-- Further assigns responsibilities with respect to the State Ethics Commission, the State Election Commission, the Attorney General, and the Secretary of State; and

-- Expands those issues involving conflicts of interest in public corruption to all local officials and employees.